



AUTHOR / KEY CONTACT

Challenging Ofsted Inspection Reports



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We have recently seen a significant increase in the number of providers across a wide spectrum of services in the education, training and the children's social care sector seeking to challenge Ofsted reports following an inspection, often on the basis that they feel the inspection has been unfair. It has been widely publicised across both the education and the health and social care sector that the aftermath of COVID-19 has had a far-reaching and direct impact on the delivery of services. Ofsted itself has recognised the ongoing impact on the pandemic in children's social care and has drawn on evidence from inspections and interviews with inspectors in its latest published [report](#).

Over the last few months, we have been instructed to undertake various challenges to adverse Ofsted ratings and inspection reports for independent special schools and adult training providers. Providers are regularly commenting on the unfairness of the findings by Ofsted during inspections and its lack of willingness to take into account the practical and ongoing challenges faced by providers. We have also seen an increase in proposed enforcement action by Ofsted and have, for example, recently successfully supported a children's home provider with their regulatory obligations to Ofsted.

[Factual accuracy checks – Ofsted reports](#)

Providers are not always aware of the tight timescales involved in challenging a draft Ofsted inspection report.

Once Ofsted has undertaken its inspection, the provider will usually be issued with a draft report and covering letter explaining that the provider will be able to undertake a factual accuracy process to ensure that the content of the Ofsted inspection report accurately reflects the facts. The covering letter from Ofsted routinely states that a provider will have until the end of the fifth working day from the date of the letter to submit any comments using the form on the Provider Portal. Ofsted usually states that it will not normally accept further comments after the first response.

It is critical for providers to make use of the factual accuracy process properly and effectively for a number of reasons. Ofsted, and thereafter the High Court (for example), will look at how quickly the provider drew to the attention of Ofsted any factual inaccuracies or concerns it had with the inspection report and the draft findings. A provider should be seen to be making those concerns known to the regulator at the earliest opportunity available.

We often find that providers feel overwhelmed by the factual accuracy process after what is often described as a challenging Ofsted inspection, particularly if the provider has not historically been required to undertake the process before. We also find that providers are understandably unfamiliar with the process, typically the Provider Portal or the format in which they are expected to submit the factual accuracy comments. These are all matters we can assist with. Providers have reported to us that they are sometimes concerned about antagonising Ofsted further by requesting factual accuracy changes. We strongly encourage all providers to make use of the factual accuracy process to ensure that the Ofsted report is an accurate representation of the service delivery and quality of provision.

Given our extensive experience in drafting factual accuracy submissions across both the education and health and social care sector, we are familiar with the procedural process of the factual accuracy check. In addition to comments about the accuracy of factual statements in the draft report, we often seek to include higher level legal submissions relating to any failures to follow relevant policies or guidance, in addition to proportionality, accuracy and reasonableness drawn from public law principles, where applicable, when drafting factual accuracy documents on behalf of providers. We always strongly encourage providers to promptly seek legal advice from a specialist legal adviser once they have received a draft Ofsted inspection report to discuss the factual accuracy process and to consider whether a submission should be lodged with Ofsted.

Formal complaint

Once Ofsted has reviewed the factual accuracy comments, it will consider the comments and respond.

The provider will then receive a final version of the inspection report along with a covering letter explaining the next steps. Again, the timescales are tight for providers if they are still unhappy with the final version of the report following the factual accuracy process. A provider can submit an online complaint regarding the report and inspection within 5 working days of Ofsted having sent the final report. Ofsted will not publish the report if the complaint is received by Ofsted within that timescale, until it has responded to the complaint.

Much like the factual accuracy process, not all providers are familiar with the formal complaints process. There are various sections that form part of the formal complaints process including complaining about inspector conduct, judgements, inspection process etc. We strongly advise that providers seek legal advice when considering whether they wish to make a formal complaint so as to ensure that the complaint is as robust and effective as it can be in drawing to Ofsted's attention the key concerns. We provide guidance to providers in respect of the format of submitting further evidence at this stage to Ofsted, along with more technical legal arguments around judgements and ratings alongside the [Education Inspection Framework \(EIF\) handbook](#) (for example) and the [grade descriptors](#).

Further action

After the formal complaints process has been undertaken, Ofsted will review the concerns and write to the provider with the outcome of the complaint and will state whether elements of the complaint have been upheld

or not. Ofsted will also then attach a final copy of the inspection report and will usually confirm when the report will be published on its website.

If a provider continues to remain concerned about factual inaccuracies within the final report, there may be other options available. For example, we have experience in challenging Ofsted further by way of pre-action correspondence ahead of Judicial Review proceedings. Each case obviously turns on its facts and so we encourage providers who remained dissatisfied with an inspection report to get in touch to discuss the options available. There are also other mechanisms for challenging an Ofsted report post-publication including writing to the [Independent Complaints Adjudication Service for Ofsted \(ICASO\)](#) for a review. Providers should bear in mind that any potential Judicial Review action against Ofsted must be taken “without delay” but no later than three months and that Judicial Review challenges are not always appropriate in every circumstance.

An adverse inspection report can lead to other problems for providers. In addition to reputational concerns, they can have a direct impact on contract monitoring activity, access to funding or can lead to suspensions on placements or contract terminations, depending on the type of service and nature of commissioning agreements in place. The stakes may therefore be high and providers may need to take action to protect and preserve the business. We have had success in ensuring that providers have been able to continue operating whilst they dispute an adverse Ofsted rating. We would strongly encourage any provider who is facing difficulties with Ofsted, particularly immediately after an inspection, to make contact so that we can assess what steps can be taken to protect the service and to assist the provider in working towards ensuring the continuation of delivery of good quality education, training, support or care.

If you are in receipt of a draft Ofsted report, please contact our experienced team, headed up by [Laura Guntrip](#), as soon as possible to discuss your situation and the options available to you at online.enquiries@la-law.com or call 01202 786135.